

**Silogram Lubricants Corp. and Amalgamated Workers Union Local 88, Retail, Wholesale and Department Store Union, AFL-CIO. Case 29-CA-19901**

April 28, 1998

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS LIEBMAN  
AND HURTGEN

On December 5, 1997, Administrative Law Judge Eleanor MacDonald issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions<sup>2</sup> and to adopt the recommended Order.<sup>3</sup>

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Silogram Lubricants, Corp., Brooklyn, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>2</sup> In agreeing with the conclusion that the Respondent's discharge of Harvey Berezin violated Sec. 8(a)(3), Member Hurtgen notes that there is explicit evidence of antiunion animus. That is, on March 29, the Respondent's agent, Stevan Jospey, told Berezin that no one was signing a union card, and Jospey instructed Berezin not to sign a card. Berezin then told Jospey that he had already signed a card. Shortly thereafter, on that day, Berezin was discharged.

<sup>3</sup> See *Edward G. Budd Mfg. Co. v. NLRB*, 138 F.2d 86, 90 (3d Cir. 1943).

*Kevin R. Kitchen, Esq.*, for the General Counsel.  
*Richard M. Gaba, Esq.*, of Mineola, New York, for the Respondent.

**DECISION**

**STATEMENT OF THE CASE**

ELEANOR MACDONALD, Administrative Law Judge. This case was tried in Brooklyn, New York, on May 13, 1997. The complaint alleges that Respondent, in violation of Section 8(a)(1) and (3) of the Act, discharged its employee Harvey Berezin because he signed an authorization card on be-

half of Amalgamated Workers Union Local 88, Retail, Wholesale and Department Store Union, AFL-CIO (the Union). Silogram Lubricants Corp. (the Respondent) asserts that Berezin was discharged for cause and denies that it engaged in any violations of the Act.

On the entire record, including my observation of the demeanor of the witnesses, and after considering the letter brief filed by the General Counsel, I make the following

**FINDINGS OF FACT**

**I. JURISDICTION**

Respondent, a New York corporation, with its principal office and place of business located at Atlantic Avenue, Brooklyn, New York, is engaged in the manufacture and nonretail sale of oil products. Annually, Respondent purchases materials, including oil products, valued in excess of \$50,000 directly from points located outside the State of New York. Respondent admits, and I find, that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Facts**

Harvey Berezin began work as a lab technician for Respondent in February 1973. Beginning in 1980, he was assigned to blend the oil products sold by the Company. Berezin measured and mixed the various components of the lubricants manufactured by Respondent and he tested the finished products to be sure that they met the required specifications. Berezin testified that at the time of his discharge on March 29, 1996, he was working about 33 hours per week. In addition to his blending duties, he ran a variety of errands for the Company and he helped the truckdrivers with loading and labeling duties. Berezin acknowledged that he had been reprimanded for arriving late to work, for leaving work early, for sleeping on the job, for arguing with his co-workers, and for engaging in a physical altercation with another employee.

The Union has represented Respondent's employees for 25 to 30 years but Berezin had never joined the Union. Berezin's wages apparently were not governed by any collective-bargaining agreement; from time to time, Berezin would ask for and receive a raise from Respondent.

On March 28, 1996, a union representative named Jim approached Berezin on the factory floor and spoke to him about the benefits of union membership. At about 4 p.m., Berezin signed a union authorization card in Jim's presence and returned it to him. Berezin testified that the next day, Operations Manager Stevan Jospey came up to him on the shop floor and told him that no one was joining the Union and that Berezin should not sign the card.<sup>1</sup> Berezin told Jospey that he had already signed a card. A few minutes later, Berezin was summoned to the office of Oscar Margolis, the chief operating officer of Respondent.<sup>2</sup> Margolis and Jospey were in the office and Berezin told them that he thought he deserved a raise. Margolis replied

<sup>1</sup> Jospey is an agent of Respondent.

<sup>2</sup> Margolis testified that he is a principal of Respondent.

that Berezin was not entitled to a raise. Berezin said, "What do you want me to do. You give raises to the union members, and they have a pension." When Margolis did not answer, Berezin left. Five minutes later, Margolis called Berezin back to the office and told him that he was dismissed.

Margolis testified that he was not at work on March 28, 1996. He stated that he did not think he had seen Berezin's authorization card before the instant hearing. According to Margolis, Berezin was in complete charge of all blending at the factory and was the necessary and key person on whom Respondent depended. Margolis testified that Berezin was a difficult employee. He created many problems due to his constant arguments with other employees, his tardiness, his early departures, and his sleeping on the job. Over the years, Margolis said, he had met weekly with Berezin and lectured him on appropriate behavior. But because Margolis needed Berezin he tolerated a great deal of misbehavior over the years.

Margolis testified that on March 29, Berezin came into his office and asked for a raise. Respondent was going through a bad period and could not afford a raise. According to Margolis, he wanted no more arguments and "no more nonsense," and because he had "had enough" he fired Berezin. Margolis acknowledged that he had let a key man go, the most important person in his business. Margolis denied that he had fired Berezin for signing a union card; he maintained that he fired Berezin because he was "just too disgusted" at the time. Margolis did not "think" that the Union or Berezin had informed him that Berezin had just signed a union card.

Operations Manager Jospey denied that Berezin informed him of the fact that he had signed a union authorization card on March 28. Jospey stated that on March 29, Berezin stormed in to Margolis' office in his usual manner and asked for a raise. When Margolis said that he could not give Berezin a raise at that time, Berezin walked out. According to Jospey, "[J]ust for his things that he'd been doing there, all the things, we had to let him go because of his craziness there."

After Berezin was fired, truckdriver Paul Wortman was trained to blend the oil products. In addition to his blending duties, Wortman continues to drive a truck.

#### B. Discussion and Conclusions

I have decided to credit Berezin wherever his testimony conflicts with that of the other witnesses. Although Berezin was subject to episodes of aggressive behavior, he freely admitted these events and I believe that he testified accurately at the instant hearing. Further, I do not credit Margolis and Jospey that after having tolerated over 20 years of difficult behavior from Berezin, admittedly Respondent's most necessary and key employee, they decided to fire him because he asked for a raise and because of accumulated craziness. Rather, it seems clear that Jospey and Margolis learned that Berezin had joined the Union the day before and that he was discharged soon after they became aware that he had signed the union card.

Based on the testimony of Berezin, I find that on March 28, 1996, he signed an authorization card for the Union, that on March 29, Jospey told him that no one was signing a union card instructed him not to sign a card, that Berezin in-

formed Jospey that he had already signed up with the Union, that soon after this conversation Berezin was summoned to Margolis' office where he asked for a raise and pointed out that the union members were getting raises and had pensions, and that 5 minutes' later Margolis discharged Berezin. I find that Respondent discharged Berezin because he signed an authorization card for the Union.

I find that Respondent's explanation that Margolis wanted no more nonsense and craziness is a pretext. There is no evidence of any precipitating factor for Berezin's discharge other than his signing of an authorization card for the Union the day before he was fired.

#### CONCLUSION OF LAW

By discharging Berezin because he signed an authorization card for the Union, the Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(1) and (3) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

The Respondent having discriminatorily discharged Harvey Berezin, it must make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).<sup>3</sup>

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>4</sup>

#### ORDER

The Respondent, Silogram Lubricants Corp., Brooklyn, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discharging its employees because they sign authorization cards on behalf of a union.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Make Harvey Berezin whole for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of the decision.

(b) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharge and notify the employee in writing that this has been done and that the discharge will not be used against him in any way.

<sup>3</sup> The parties stipulated that Berezin declined an offer of reinstatement in February 1997.

<sup>4</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facility in Brooklyn, New York, copies of the attached notice marked "Appendix."<sup>5</sup> Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 29, 1996.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

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<sup>5</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

## APPENDIX

### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT discharge or otherwise discriminate against any of you for supporting Amalgamated Workers Union Local 88, Retail, Wholesale and Department Store Union, AFL-CIO, or any other union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL make Harvey Berezin whole for any loss of earnings and other benefits resulting from his unlawful discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful discharge of Harvey Berezin, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

SILOGRAM LUBRICANTS CORP.